

## SB 423

### Testimony Outline of Tom Daubert, PATIENTS & FAMILIES UNITED March 25, 2011

I commend the Senate subcommittee for its hard work, and despite all its extremely serious flaws and probable unworkability, I support SB 423 because it appears to be the only remaining vehicle for preventing outright repeal and maintaining a medical cannabis program of some sort - however feeble, crippled, unfair and in many respects embarrassing to the state and contradictory to voter intent it may be.

I have gotten to know as close friends many patients suffering widely divergent medical conditions, including chronic pain with varied causes, and I have witnessed many times how greatly cannabis allows these patients to lead better, more productive lives. In my view, it is better for Montana to end up with a policy that allows even one such patient to receive this comfort than none.

Unfortunately, I think SB 243 will cause a great deal of unnecessary suffering, making it difficult for many legitimate patients to have reliable access to the cannabis that helps them more -- and costs less -- than narcotics for which these patients no longer have prescriptions.

The bill's goals appear to be to make cannabis available to as small a number of Montanans as possible, without real regard for medical needs and benefits, and with little regard for what trained physicians acting in full accordance with standards of practice think, and to make the existence of the program as invisible as possible. The goals of true medical legitimacy, and of ensuring a well regulated and monitored but workable service to patients, seem to be ignored.

It's a tragedy for many truly worthy patients that this appears to be the final track the Legislature will take. The law needs improving, but its problems could have been fixed and the abuses could have been ended in ways that would well serve patients rather than punish many of them instead.

I question the workability of this bill on a number of different fronts. Yesterday, I asked the Board of Medical Examiners a series of simple questions that the Board -- I hope -- will have the time to discuss and answer before another hearing on SB 423 is held. My questions to the Board were as follows:

Do you think the bill's requirements for physicians generally and for chronic pain patients in particular are:

- \* workable
- \* practical in today's healthcare environment
- \* feasible for patients on Medicare and the like
- \* fair to patients and physicians

- \* outside the norm of standards of practice for other issues/medications
- \* necessary to ensure medically legitimate mmj recommendations for patients

I was told by the Board of Medical Examiners that these are very good questions, but that the Board hasn't had time to evaluate them yet.

My guess is that SB 423 envisions processes and procedures for chronic pain patients that simply do not fit in the real world of how healthcare is presently delivered and paid for in Montana, and that for the vast majority of genuine, legitimate pain patients, including veterans, it simply will not be possible for the bill's stiff prequalification requirements to be met. If so, that will be a tragedy for a great many suffering Montanans who deserve far better from legislators who themselves don't possess licenses to practice medicine.

It's been said quite often that Montana voters didn't vote for the situation that has evolved over the last 18 months – and I have agreed. But they didn't vote for arcane, government intrusion on the professional judgments of physicians either, and they didn't vote for a system that could well make it impossible for the most medically legitimate patient to have reliable access to affordable medical-grade cannabis.

Meanwhile, I think it's important to note that no one objected to the way our current law was working until one person launched flashy so-called clinics that exploited the law's gray areas and that also pretty directly defied its requirements for physician recommendations. But in large measure, thanks to recent policies adopted by the Board of Medical Examiners, those shoddy and unacceptable practices have been ended already; my understanding is that many of the people who received "cards" via those clinics are now finding themselves unable to renew – and that is how it should be. There are constructive ways to further ensure that all physician recommendations are legitimate, without punishing pain patients and imposing a process that can't be implemented fairly in the real world.

I regret that the Legislature apparently has rejected less hastily developed proposals to "fix" Montana's medical marijuana law which enjoy far greater support than this bill – truly bipartisan proposals that have been supported by all the state's law enforcement groups and agencies, by local governments, and by a great many patients and growers as well.

But if SB 423 is the only remaining vehicle to help and to protect even a single patient, as I have said, I will support it in spite of the great sadness in my heart at the knowledge of how many patients this overly punitive approach will leave behind, and how much Montana creativity and innovation in the production of cannabis-based products this bill will stifle completely.

Several final suggestions I feel compelled to make. First, this bill cries out for a Fiscal Note based on a thorough assessment of how its provisions would fit in today's healthcare

environment in Montana and of the many seeming new responsibilities it would create for law enforcement agencies both local and statewide.

Second, I implore you to amend this bill to allow people on probation to qualify as patients when they suffer life-threatening medical conditions for which cannabis is documented to be invaluable. I know one such patient, and I urge you to assume no moral responsibility for his demise.

Third, I know there has been some discussion about banning patient eligibility for minors, without regard to their medical need. I think this would be a serious mistake. I am among those who agree that research strongly indicates cannabis poses unacceptable risks to young people whose brains haven't yet fully formed. But keep in mind that where the very few legitimate minor patients are concerned, we are generally talking about people who are likely not to live long enough for their brains to evolve fully – they have end of life conditions and conditions involving extraordinary suffering. These young people, and their parents, working with their physicians, deserve the freedom to do what they think best for themselves.

That's what voters, in my mind, DID vote for – for people suffering various medical conditions to have the freedom to use cannabis without fear; and for Montanans to work together, constructively and productively, to allow their needs and freedom to be fulfilled.

### Doctor-Recommendation Requirements

As introduced, SB 423 would likely obstruct most pain patients without regard to their medical legitimacy and need. In particular, it would likely close the door to all VA-connected patients, despite the fact that the federal agency now respects and honors a vet's right to use cannabis for legitimate medical purposes.

### Ban on Probationers

Probationers with life-threatening conditions should remain eligible on some reasonable basis, with strict supervision, to be legal patients.

### Ban on Out-of-State Patients, Reciprocity for Legal Patients Visiting Montana

People with cancer, multiple sclerosis and numerous other conditions sometimes travel, particularly to visit loved ones when they know they are dying. Such visitors to Montana shouldn't have to fear arrest and prosecution when they are legitimate patients from other states, or when they have come to Montana to receive specialized medical care.

### Transition Issues

As written, the bill would allow many patients to remain legal – but would close the door to any production of cannabis for a period of many months, leaving these patients unable to provide for themselves and yet also without the prescriptions for alternative medicines that have proven less helpful.

### Ban on "Stores" or Dispensing Locations

This would appear counter-productive, a possible invitation for "black market" activities rather than above-board processes. While some patients have no desire to be seen entering a "store," others prefer having the ability to acquire cannabis in a process that allows full inspection of available choices. There are ways to allow dispensing facilities while also ensuring no intrusion on local community values.

### "Courier" Problems

The requirement that a courier contact local law enforcement for each delivery, naming the patients involved, would violate ordinary confidentiality expectations and rights – and possibly create an undue and unfunded burden on law enforcement.